

**Takeovers vs. Institutions in
Corporate Governance in Germany**

Theodor Baums

Arbeitspapier 1/92

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I. Introduction

The corporate governance Systems in the U.K. and in Germany differ markedly. German large firms have a two-board structure, they are **subject** to employee **codetermination**, their managements are not confronted with public hostile takeover bids, and banks play a major role in corporate governance, through equity **stakes**, through proxies given to them by **small** investors, and through bankers' positions on the supervisory boards of these firms. One of the main issues of corporate governance in large firms, the **problem** of shareholders' passivity in monitoring management in Berle-Means type corporations, is thus addressed by an institutional Provision, the role of the banks, rather than by a market-oriented Solution as we find it in the U.K. with its "market for corporate control" through the threat of hostile takeovers. These two different **approaches** to corporate governance have been compared several times recently, and it was argued that a bank-based or institutional Solution has **clear** advantages and should be preferred. Cosh, *Hughes* and *Singh*,¹ for example, argue at the conclusion of their **discussion** of takeovers and short-termism in the U.K. that

"the institutional shareholder [in the UK] should take a much more **active** and vigorous part in the internal governance of corporations. . . . In **order** for such a proposal to be **effective** both in disciplining **inefficient** managements and promoting long-term investments, far **reaching changes** in the internal workings and behaviour of the financial institutions would be required. The financial institutions would need to pool their resources together, set up specialised departments for promoting investment and innovations - in other words behave like German banks."

The following remarks seek to continue this **discussion** from the German **perspective**. The **article** will first attempt to evaluate the monitoring potential of our **domestic** bank or institution-oriented corporate governance **system** and then, in a **further part**, compare it with that of a market-oriented Solution. It will be argued that both Systems **focus** on different **problems** and have specific advantages and **drawbacks**, and that there are still quite a few puzzles to be solved until all pros and **cons** of **each** of these monitoring devices **can** be assessed. The **perception** that both Systems **focus** on different **problems** suggests combining institutional monitoring with a "market for corporate

control” rather than considering them to be contrasting and incompatible approaches.

The article is organized as follows. Section II will describe the legal structure of the large corporation in Germany in more detail. Section III explains why a “market for corporate control” by the threat of public hostile takeover bids does not exist in Germany. Section IV then shows how corporate governance in publicly held corporations with small investors is organized instead, and deals with the role of banks in corporate governance in these firms. Section V of the article then will try to compare the monitoring potential of a market-oriented and our bank or institution-oriented corporate governance System. Concluding remarks follow.

II. The Structure of the Large Corporation

1. Legal forms of firms and distribution of ownership

In Germany firms can be organized and run either by a sole proprietor, a partnership² or by a corporation. The most important forms of corporations are the private Company with limited liability³ and the stock corporation.⁴ The following remarks will only deal with the publicly held stock corporations, the stock of which is either owned by scattered individuals or by institutions. While only focussing on these publicly owned corporations we have to keep in mind that although we are speaking of a small number of firms, they are also Germany’s largest firms: In 1990 there were about 2 million firms in Germany; of these about 430,000 were private companies with limited liability and less than 2,700 were stock corporations.⁵ Of the latter only 551 are quoted on a stock exchange,⁶ and of these 551 about 80 are widely held and traded.⁷ However, most of these corporations with widely distributed ownership are among the 100 largest firms in Germany⁸.

2. The three "organs" of the stock corporation

To understand corporate governance in these large stock corporations, the impediments to hostile takeovers (cf. Section III.) as well as the role of the

banks in this **respect** (cf. Section IV.), it is necessary to mention some **special** features of German corporate law.

First, the two-tier or dual **boards** System, which was established in 1870. It consists of a management board and a separate supervisory board. Management is appointed, mostly for five year terms, and is dismissed by the **supervisory board**.⁹ The management runs the day-to-day business of the firm independently and **can** only be recalled for **cause**. Complete power rests with neither the management nor the supervisory board. A more detailed picture would show a **complex** structure of **balance** of powers between these two Organs. The powers of the shareholders' meetings are restrained to **basic** decisions such as **changes** of the Statutes, approval of the annual Statements of accounts, distribution of (half of) the annual balance-sheet **profits**, election of (half the) members of the supervisory board, consent to some specific **structural changes** as mergers, issuance of new stock and the like.

Second, the *codetermination system*¹⁰ involves members of the supervisory board that are neither elected nor appointed by the shareholders. In firms with more than 2,000 employees, half of the members of the supervisory board are elected by the shareholders and the other half by the employees (blue and white collar as well as lower-ranking management) and labor Unions. **Hence**, the members of the supervisory board and the management board are considered to be agents of all stakeholders in the firm rather than of the shareholders only. ¹¹

Third, the *voting process*. There is no proxy **system** with proxies for the management. In the shareholder meetings shares are either voted by the shareholders themselves or - in the **case** of smaller shareholdings - by institutions, mainly banks, which act as custodians for the shares. This voting power of a few banks, sometimes not more than three or four, **each** with a large block of votes, gets their representatives on the supervisory boards (alongside the representatives of the employees and trade Unions). This will be described in more detail in Section IV.

III. Impediments to Hostile Takeovers

1. Specific structural features of German corporate law

To date, no public hostile takeover bid has been successful in Germany. One **actual case** is still pending - although a bid in its technical sense has not yet been launched - the struggle between the two tyre makers Continental AG and Pirelli of Italy. The attempt of the **French Company** AGF to take over the insurer AMB has recently been settled by an agreement. What are the reasons for this **pattern** which obviously is so different from the **Anglo-American** corporate world?

To **start** with, these **recent** cases may indicate an ongoing **change** which will probably be reinforced by the **further internationalisation** of markets and **changes** of the economic and regulatory environment in the E.C. Apart from that, the **fact** that public hostile takeovers did not occur until now does not mean that there are no hostile takeovers at all. The management of Hoesch AG, the shares of which were recently taken over by Krupp, would probably have liked to **hinder** this shift of control if there had been a **chance** to do so. Resistance to a hostile takeover is not always possible, as will be shown later, and will **become** particularly difficult for an incumbent management if it loses the support of one or even several depot banks. That means that in such cases these institutions will still play an important if not a **decisive** role, and that means in turn that these cases **cannot** - in terms of our differentiation between inside monitoring by institutions versus outside control by a takeover market - be attributed clearly to the latter. **Hence** it is justified to exclude such "private" hostile takeover activities which are accompanied or supported by the depot institutions and **focus** on public hostile takeover bids only.

We need not speculate **about** different corporate **cultures** here to explain why this technique to gain control even against the will of the incumbent management is not used in corporate Germany so far. There are quite a few more tangible and concrete arguments which explain this **pattern** as a result of specific structural features of German Company law as well as of the conditions of corporate finance and other peculiarities. The following remarks will try to describe some of these impediments to hostile takeovers in more detail.

aa) First remember the comparably small number of potential targets: There are less than 100 listed stock corporations with widely distributed shares.¹² The continued concentration of equity holdings in families or small groups of shareholders can to a large extent be explained by the relative importance of debt (bank) rather than equity financing.¹³

As to the large corporations with widely distributed stock, the shares in these firms are normally not voted by the shareholders themselves but by *depot banks as proxy holders*. Hence these few large banks play a key role in this respect. Until recently the majority of these banks firmly opposed public hostile takeovers (“blunders of American capitalism”) and supported managements in protecting firms and themselves against possible attempts by amending the Statutes through antitakeover provisions. Is this attitude likely to change if the banks’ competitors from abroad finance hostile takeover bids in the future? Only if the benefits from supporting a hostile takeover bid outweigh the disadvantages that our large banks still fear from their corporate clientele if they were to support such an **attack**. In this **context**, it should be mentioned that the Großbanken (large banks) themselves are also (or were at least until recently, before the cross-holding **alliance** between Dresdner and Allianz) large corporations with widely dispersed shareholders; **hence**, their managements have no interest in being exposed to a hostile takeover, either. On the other hand, the banks as depot institutions have been increasingly criticised in the literature as well as in the media. Not least **because** of this criticism two of the three Großbanken recently abstained from voting in the Conti **case** where the issue was whether they, as the proxy holders of their clients, were to abolish an antitakeover Provision in the company’s statute.

bb) A **second structural** impediment to hostile takeovers is the *two-boards structure*. The representatives of the shareholders on the supervisory boards (half the members of this board) can be recalled before the expiration of their office term (usually five years) only with a supermajority of 75 % of the votes cast. The members of the management boards can, by resolution of the supervisory board, be recalled prematurely only for **cause**, although a recall without **cause** is valid until nullified by a **court**. However, if someone has

succeeded in acquiring the majority, the board members will usually submit to the development.

cc) A further impediment for takeovers financed by means of the **assets** of the target (LBO's) are the *strict capital protection rules* of German corporate law which prohibit these financial techniques. By the same token, repurchases of shares as an antitakeover **device** are also prohibited.

dd) *Antitrust law*, the *law of groups of companies* and *labour law* specialties **can render** takeovers difficult. If a bidder is a group of companies or is going to be such a group by virtue of its acquisition it will be **subject** to the rules of the law of groups of companies which provide for the **protection** of minority shareholders and **creditors** of subsidiaries. Shutting down plants or laying off employees **can** be a cumbersome and costly undertaking.

2. Statutory antitakeover provisions; preventive actions

Apart from these and other **structural** impediments some specific statutory antitakeover provisions and preventive **actions** are possible and **can** be observed. For the purpose of this **article** it should **suffice** to mention the most common or sweeping ones rather than to display the whole **palette**.

aa) In 1990 the Statutes of 23 of the large stock corporations with widely distributed shares provided for *caps on voting rights*.¹⁴ In such a **case** a shareholder **cannot** vote more than (usually) five **percent** of the stock **irrespective** of the number of voting shares held by him. **Since** 1990 several firms have eliminated this Provision. In the long run a firm with a controlling shareholder will have to **come** to terms with a major shareholder despite a voting limit if the latter is not to block everything, **since** the voting cap **affects** only the voting right and not the other rights of a **shareholder**.¹⁵ Apart from that, this Provision **can** be overcome by help of "friends" who vote together with the shareholder that seeks the control. That is the main issue in the Conti-Pirelli **case**.

bb) A much more **effective** means of preventing takeovers are *registered shares*. It is contended in the literature that **about** one third of the German stock corporations, among them 47 companies listed on stock **exchanges**, are equipped with this **device**.¹⁶ In such a **case** the management board has broad **discretion** whether or not to register an **acquirer**.¹⁷ The acquirer's rights as a shareholder depend on registration.

cc) *Crossownerships* between two firms up to a **stake** of 25 % of the other firm's stock can be organized by the managements of these firms. The shareholders' consent is not necessary. A famous example which was recently reported by the financial press is the interlock between Dresdner Bank and Allianz, the largest **European** insurer. This example **shows**, however, that such an **alliance** cannot be entered into by management without an underlying business rationale other than to provide a defense against takeovers, and the acquisition of a **stake** of, say, 15 % of the stock of another large firm has to make sense in other **respects**, and has to be approved by the supervisory board and explained to the shareholders and the public.

dd) Another model which avoids these **drawbacks** which can be found in practice consists of several large firms setting up a *joint subsidiary* which acquires **small blocks** of shares of the participating firms and acts as a "white knight" in the event of a hostile takeover **bid**.¹⁸

There are other devices such as staggered boards, the issuance of preference shares without voting rights and so forth which need not be explained here **fully** to show that hostile takeovers **face** cultural and **structural** impediments as well as **obstacles** set up for the purpose of obstructing the acquisition of a controlling block of shares.

This takes us back to our question of how, if not by the threat of takeovers, management in these firms is monitored. Theoretically there are several instruments and devices which could serve to align the interests of the

management with those of the **stockholders**, employees and creditors of the firm:

- Monitoring of the management by the supervisory board;
 - Pressure from the various **factor** markets (**product, capital, labor**) as far as these are competitive;
 - Competition in the market for managers;
- Incentives in contracts with the **compensation** of managers tied to their Performance;
- Monitoring by creditors;
 - The threat of bankruptcy and the resultant **loss of prestige** and reputation; and
 - Legal rules **under** which managers must act with loyalty and **care** with **respect** to the firm and its various stakeholders.

To be **sure**, not all of these devices are thought of as aiming at the same goal; the liability rules, for example, are more concerned with misbehaviour such as **self-interested** conduct by management, rather than with monitoring managerial efficiency.

Our **focus** here is not on all of these devices but only on the attempt of the German **system** to overcome the **problems** of shareholders' passivity in monitoring management in Berle-Means type corporations by an institutional arrangement rather than a market-oriented **solution** (i.e., through the "market for corporate control" or the threat of hostile takeovers). This institutional **solution** consists of financial intermediaries (universal banks) which act as **proxy** holders for **small** investors. The banks are **better** informed than **small** investors and have the advantage of economies of **scale** when monitoring the management. **Hence**, the "agency **costs**" due to **asymmetric** information and collection **action problems** of **small** shareholders in Berle-Means type corporations **can** perhaps be reduced by inserting these institutions. But new

questions arise: What incentives do these institutions have to monitor corporate activities? Do they **really** act on behalf of the shareholders? And how is their Performance? Does "internal monitoring" by institutions have limitations which a market Solution does not have? Are there other interests which distract or deter them from pursuing their clients' - the **small shareholders'** - interests? Are the "**controllers**" themselves "**controlled**"? Before these questions **can** be addressed, the **system** and practice of the depot banks should first be described for the benefit of the foreign reader.¹⁹

IV. **Banks as Institutional Monitors**

1. The instruments
 - a) Proxy held by banks

The typical large German firm with dispersed shareholders finds its shares in voting blocks which are voted by a few banks and which, if aggregated, **comprise** up to 30 % or more of all **votes**.²⁰ This voting power, which helps **place** representatives of the banks on the supervisory **board**,²¹ comes from different **sources**: from directly owned **stock**,²² from investment companies **controlled** by banks,²³ or from voting the shares held by banks as custodians for their clients.

Since the Separation of commercial banks and securities firms is unknown in German banking law, banks are allowed to trade stock. They may also offer their customers custodial or depository Services for those shares, administer them (e.g., collect dividends), and vote them at shareholder meetings. Shares of German publicly-held corporations are predominantly bearer shares; smaller shares are mostly part of a **single global document**. A shareholder who wants to hold **actual** stock certificates will have to pay additionally for them. This drives stock into institutions.

Banks need a **special** written power of authority to vote the deposited shares. There is no ceiling or cap limiting the exercise of the voting rights by banks to a certain **percentage** of the firm's stock **capital**. The power of authority for the bank, or proxy, **cannot** be given for more than fifteen months, and it is revocable at any time. Before a shareholder meeting, banks have to recommend to their customers how to vote, and must ask for **special**

instructions. As a practical matter, special instructions are extremely **rare**.²⁴ If the shareholder does not give the bank special instructions, the bank is to vote according to its recommendations. Generally, banks can vote their customers' stock on any matter. In its own shareholder **meeting**,²⁵ however, a bank may only vote stock if it receives **explicit** instructions from its shareholders.²⁶

Banks do not **charge** extra fees for voting their clients' stock. There is only a **basic** fee for their depot (custodial) Service.

bb) There are several older empirical studies on banks as proxy holders.²⁷ The most **recent** ones were published by *Gottschalk*²⁸ and by *Böhm*.²⁹ Gottschalk selected those companies from the list of the 100 largest firms in 1984 where more than 50 % of their stock was either widely held or owned by banks. These 32 companies, with a (nominal) equity capital of DM 29.5 billion, represented **about a quarter** of the nominal capital of all German stock corporations. Among them were seven of the ten **largest**³⁰ firms of the Federal Republic. Böhm extends this study on a smaller **sample** of firms.³¹

Unlike *Böhm*, *Gottschalk's* study adds up the voting power of the banks' own shares, their depot shares, and shares held by investment companies, **which** are bank subsidiaries. His study **shows** the following results: on **average**, banks represented more than four-fifths (82.67 %) of all votes present in the meetings. With one exception, they represented at least a majority (more than 50 %) of those votes present. Consequently, they were able to elect the members of the supervisory board elected by the shareholders (as opposed to those elected by the employees). Changes of the Statutes of the **corporation** could not be effected against their votes. In 22 or two-thirds of the firms, the banks voted more than three-fourths of the stock present and thereby could **change** the Statutes. No other shareholder could block these decisions. Note that most of these corporations (by the votes of these very banks) have adopted provisions in their Statutes to the **effect** that no one shareholder may vote more than (typically) 5 % of all shares of the **company**.³² This **rule**, however, does not apply to banks in their **capacity** as proxy holders voting for different clients.

The breakdown in *Gottschalk's* study shows that the voting rights are highly concentrated in the three largest private banks (Deutsche Bank, Dresdner Bank, and Commerzbank). Together these three banks voted on **average** approximately 45 % of the stock that was represented at the general meetings of the 32 **companies**.³³ In **almost** half of these cases (15 firms), they together held the majority; in a **further** one-third (10 firms) they had a **blocking** minority. In individual cases, one or another of the big banks dominates; in most cases the votes are distributed roughly equally among them, or the other two banks together have **about** the same number of votes as their **competitor**.³⁴

The extent of coordinated behaviour of these banks in the voting **process**³⁵ has not yet been empirically determined. A government **commission** in its report of 1978, noted that "the banks mostly vote in the same **sense**".³⁶

b) Banks as Shareholders

aa) A **second source** of influence of banks in corporate affairs is their **position** as stockholders for their own account. According to German banking law, **credit** institutions may acquire and hold stock in nonbank firms for their own account; there are no rules **which** forbid or limit such holdings to a certain **percentage** of the firm's **capital**. There are only **caps** or limits with **respect** to the bank's **capital** to **protect** the depositors and **creditors** of the bank: a **single participation** in one firm may not exceed 50 % of the **capital** of the bank.³⁷ **Further**, investments of a bank in **stockholdings** and other illiquid assets may not exceed its own **capital**.³⁸

The **Second EC Banking Directive** lowers these limits: In the future no single holding may exceed 15 %, nor all holdings together 60 % of the **capital** of the bank.³⁹ Additionally, the **recent draft** of an EC **directive** concerning large **credits** limits **each single "credit"** (including participations on own account) to 25 % of the **capital** of the bank.⁴⁰ Practically, however, these new rules will not mean **significant changes** for German banks and their equity holdings.

bb) By the end of 1989 German **credit** institutions directly and through subsidiaries held 4.69 % of all shares of **domestic stock corporations**⁴¹ (this number includes subsidiaries of banks, such as corporations that own bank

premises, etc.). For the issue of “banks and corporate control” this number alone is not very informative. It does not tell us whether or in which banks these holdings are concentrated; in how many cases these holdings are mere portfolio investments rather than controlling blocks of shares; whether they are acquired only for short term, for placement or trading purposes, or as a long-term investment; or what the structure of the remaining shares is (i.e., whether they are widely dispersed or concentrated).

In his recent study *Böhm* analysed the shareholdings of banks in the 100 largest industrial firms (measured by turnover). In 1986 12 credit institutions held participations in 22 of these firms.⁴² The list shows that the holdings on own account have little relation to the blocks of shares voted by banks in the name of their clients. Second, the size of the holdings is not distributed equally; they rank from about 5 % (holdings of all banks in one firm) up to more than 50 % (holding of a single bank in one firm). Third, the holdings are rather stable over time. This impression is confirmed when we compare recent with older data.⁴³

c) Interlocking directorates

aa) Influence on management, its decisions, its appointment and dismissal is not exercised directly by the shareholders but by the supervisory board. Therefore, seats on the supervisory board are crucial for every shareholder or institution that wants to have a say in corporate governance, obtain relevant information, etc. Banks influence or strengthen their influence on firms by appointing members to the supervisory board of the companies. One can find bank managers and other professionals on these boards who are appointed to multiple boards with the votes of the same institution, but such “informal” relationships between a bank and these professional supervisory board members are difficult to identify; however, interlocks with firms by board members of the bank must be disclosed.⁴⁴

Members of the managing board or the supervisory board of a bank can be members of the supervisory board of a firm, be it as a consequence of the

credit relationship. That does not mean that management does not also try to influence the **selection** of its supervisors to a certain extent. As mentioned earlier, the members of the supervisory board are - except of those elected by the employees - elected by the shareholders. A **single** person may not be a member of more than ten boards at the same time. This rule, however, does not **restrain** the institution which he or she represents. There is no rule in German law that prohibits Service on boards of competing firms. **Direct cross-interlocks** (the member of the supervisory board of Company A sitting on the management board of Company B and **vice versa**) are forbidden.

As mentioned above, the supervisory board appoints the members of the managing board and may dismiss them though only for **cause**. It is responsible for monitoring the management, although practically it **acts** as an advisory **committee** rather than as a monitoring **panel**⁴⁵ except in times of financial distress of the firm. To accomplish its duties, the board has the right to receive comprehensive information. The management must report to it periodically on all important questions, and the supervisory board may always ask the management for reports. The supervisory board reviews the annual reports and **balance** sheets of the firm. The board may require management to obtain its **prior approval** before **entering** into certain important **transactions**, such as obtaining (or granting) loans above a specific amount. Board members must treat Company information confidentially.

The chair of the supervisory board has a particularly influential **position**.⁴⁶ He prepares the meetings of the board - which are less frequent than, for example, board meetings in the **U.S.**⁴⁷ - proposes the agenda, and stays in steady contact with the management. The management has to brief the chair immediately on all important occasions. If there is a stalemate in a vote on a board under a **codetermination** regime (a rare event), the chairman breaks the tie.

bb) Comprehensive data on personal links between firms and banks in Germany do not exist. Various studies have been done at different times in different **sectors**.⁴⁸

Let us have another look at the list of the 100 largest firms which has been provided by **Böhm**.⁴⁹ 92 of these firms had a supervisory board (numbers as

of 1986); banks were represented on 75 (= 81 %) of these boards. They held more than 10 % of all seats and more than 20 % of the **seats** of the shareholders' side of the board. On **average** they had more than 2 representatives on **each** board. The three Großbanken held more than 61 % of all banks' seats; the Deutsche Bank alone held 54 seats in 44 of these largest firms. The key **position** as president of the supervisory board was held by banks' representatives in 1986 in 20 of the 92 firms.

Although these numbers, which refer only to **direct** personal links between a bank and the large firms, do not give us the whole picture of the potential influence which **can** be exerted by banks through the supervisory boards, it is safe to say that there is a **significant** potential for banks to get information, give advice and monitor management in most of these large firms. But do banks really exert their influence and, if so, to what extent and with what results? If these questions **cannot** be answered satisfactorily, **can** we at least say something **about** the incentives and disincentives to monitor or behave in a way which might be advantageous for the bank, but disadvantageous for the other shareholders, among them the bank's clients?

2. Control, incentives and disincentives to monitor

a) "Control" **can** mean various grades on a **scale** that **starts** with the right of a shareholder or a bank to information, which in turn **causes** management to refrain from certain **actions**, and ends with the power to recall the incumbent management. In the following we consider (aa) control by means of **better** access to information; (bb) influence by giving advice to management on an ongoing basis; (cc) influence by appointing the members of the management board; and (dd) interim and ex post monitoring. There are certainly other ways for a bank to exert control, especially if it is also a lender to the firm (scrutinizing of the borrower before granting or extending a **credit**; monitoring **during** the **credit** relationship; pressure of the **claim** to fixed payments **irrespective** of the unsteady flow of returns to the borrowing firm; threat of bankruptcy), and these means are perhaps even more important for monitoring management than the instruments described here if one looks at the extent and **importance** of **credit** finance for German firms.⁵⁰ Although the means and devices available to a bank as a **creditor** do not stand in the

center of our interest here, we also have to consider in the following the extent to which the bank's role as custodians is either reinforced or hampered by their other role as (major) **creditors** of the firm.

aa) *Information about* somebody may influence that **person's** behaviour if the person is aware of it. As mentioned above, the management board must **report** to the supervisory board on a continuing basis. **Hence** information **about** the firm and its management, so far as it is given to the supervisory board at all, is **almost** always immediately available to at least one bank on the supervisory board. Thus, information **about** the **plans** and the quality of the **firm's** management **can** be **disclosed** to these institutions without the need to make this information public - information which the banks perhaps would not get otherwise.

However, it is **doubtful** whether this argument is valid. Remember the rather infrequent meetings of the supervisory board. A poll of banks done by *Fischer* shows that a bank does not expect to get any **better** or more thorough information from its representatives on the board than it already has as the firm's **creditor**.⁵¹ In addition, members of the supervisory board must keep confidential the information they get in that **capacity**.⁵² Board members are normally well aware of this **because** the **breach** of this duty is a **criminal offence**.⁵³

In all, it does not seem very likely that the information which a bank gets from its **position** on the supervisory board puts a tighter rein on management than would be the **case** without board membership.

bb) Bank representatives on supervisory boards have specialized knowledge, particularly in the field of finance. Very often they have an **office** back in their bank with **special** facilities, such as the help of an assistant, to **support** them in their work as a board member. The large banks have **departments** specialized in corporate finance, analyzing the financial markets as well as the financial needs of their **client** firms. This information, too, is available to the representatives of these banks. Thus, these representatives **can** provide the **respective** firms *with specialized advice, financial knowledge and information*.

Banks may not be able to run industrial firms themselves, but from the activities of their representatives on supervisory boards they know the **manager** market quite **well**. They should at least be able, by the exercise of their stock voting rights, to appoint the right **people** to the supervisory board, **which** in turn **can** provide management with information and experience in other **fields**.⁵⁴ A poll done by Bleicher **shows** that nine of ten board members in his **sample** believe that the **actual** influence of their advice on management is "strong."⁵⁵ This belief, of course, does not mean that this is in **fact** the **case**, especially given the rather infrequent Sessions of the supervisory board, although there is some **evidence** that there are informal contacts between the board and management between the **sessions**.⁵⁶ Certainly one also must make a **distinction** between the chairman of the supervisory board and the members of certain subcommittees on the one hand, and the "regular" members on the other.

cc) Where advice **cannot** be given **because** of institutional impediments (infrequent Sessions, for instance), and where the supervisory board **cannot** monitor the management (see subsection (dd), below), the more important is the question of whether the supervisory board is **capable** of *sorting out managers from the beginning* who appear **capable** of doing a good job - **because** of the **pattern** of their behavior in the past, their career and previous success - even if their efforts **cannot** be observed on an ongoing basis. This seems, indeed, to be the most important task of the Supervisor-y board, and banks seem to play some role in this **respect**.

It has already been mentioned that the members of the management board are appointed by the supervisory board and that - in large German corporations - one half of the members of the supervisory board is elected by the shareholders. That means that in our **sample**⁵⁷ all banks together determine who sits on the shareholders' side of the supervisory board, even if there are no personal interlocks. Furthermore, if there is an open conflict between shareholders' and employees' representatives on the board, the shareholders could push their management candidate through, **because** of the tie-breaking vote of the **chairperson**.⁵⁸ That means that banks have a **decisive** influence on who gets into the management boardroom even though the members of the **supervisory** board are legally independent and may - should a conflict arise - act independently. To the extent one bank dominates

the shareholders' meeting, is represented on the nominating **committee** of the supervisory board or holds the **position** of chairperson, its influence will be greater **accordingly**.⁵⁹

In their roles as **creditors**, shareholders, proxyholders and their representation on many supervisory boards, banks should know the market for managers quite **well**. Nevertheless, bankers' influence on the appointment of managers could be detrimental if only one institution, with perhaps doubtful knowledge **about** the firm's particular **sector**, had to decide. But that seems not to be the **case**. If we keep in mind that the three big banks often have similar voting holdings or that two of them **can** outweigh the other, that the members of the supervisory board are not bound to follow the instructions of the shareholders, and that the shareholders' representatives would think long and hard before they pushed a candidate through against the vote of the employees, then it **becomes clear** that a candidate for the management board has to pass several tests of **qualification** and approval and is not simply appointed by one dominating institution.

dd) With regard to monitoring management, it is useful to differentiate between interim and ex post monitoring.

Interim **monitoring can** occur especially in **cases** where the management must ask the supervisory board for its consent, like, for instance, if the management **plans** to shut down a plant, enter into a loan agreement and so forth. Another **case** where the supervisory board is likely to interfere is where the firm is in financial distress. Apart from these **cases**, "interim monitoring" activities seem to be **limited**.⁶⁰

But the supervisory board may be able to measure the **performance** of the management by its results at the end of certain **periods** (i). If so, there may be **incentive** for management to **perform well** even if it is not monitored continuously, if management **can** be recalled in the **case** of disappointing results (ii). At first sight, *expost monitoring* in this sense does not seem to be directly related to the role that banks in particular have in corporate governance, and could theoretically occur without them. There is, however, a link between the ex post monitoring role of the supervisory board and the **existence** of depot institutions. It **becomes** evident when one considers the

difference between a board **system** with outside directors on the board who are there because of the influence of the managing directors, the chairman or the **CEO** on one side and a two-tier **system** on the other where you have “outside” supervisory board members who are appointed by large influential institutions in the shareholder meetings rather than by the incumbent management. The readiness of the supervisory board members to act and, if necessary, even to dismiss or not to prolong the contracts of the members of the management board should be stronger because of the independence guaranteed through the **existence** and role of influential institutions in the shareholder meetings.

(i) How does the supervisory board measure the Performance of the incumbent management? According to German law management must prepare and publish the firm's **balance** sheet and **profit** and loss Statement annually. Both are reviewed by independent public accountants who are responsible to the supervisory board and report to it. There are additional obligatory interim reports that are provided to the supervisory board only. The supervisory board **can** then put **further** questions to the management, compare the results of the firm with past results as well as with those of the firm's competitors (to the extent that such information **can** be obtained) and thus get at least a partial picture of the Performance or mistakes of the incumbent management as a whole and perhaps also of individual members of the management board. To the extent to **which** this information is **disclosed** to the internal supervisory board only and not to the **capital** market, this “institutional” Solution may have an advantage over the market if it also provides for appropriate **reactions** (see subsection (ii), below).

The Observation that this internal monitoring **system** relies very much on comparisons with previous results, **plans** and the results of the industry competitors hints at a limitation of such an internal monitoring **system** which will be examined later, in the **context** of and the comparison with, takeovers. A potential outside bidder may have information **about**, say, a new **technology** **which** the board of a specific firm does not have. Is “outside” governance by (hostile) takeovers **which** forces a firm to react to technological **changes** before the competitive process on the **product** markets will do so a necessary Supplement to an internal monitoring **system** which fails in such **cases**?⁶¹

(ii) Can boards react, and do they really react, if they observe bad Performance? If so, this **can** be anticipated by management and give it an **incentive** to try harder.

A member of the management board **can** be recalled only for **cause** before the expiration date of his or her **term**.⁶² For this reason, as well as **because** of the attendant bad Publicity, such **recalls** occur only in cases of **criminal offences**, etc.

Practically, there is the more subtle threat of not renewing the contract after its expiration (a manager's term may not last longer than five years; at that **point**, the supervisory board must explicitly decide whether or not to renew it).⁶³ *Poensgen* and *Lukas* have published an interesting empirical study in **which** they show that there is **significant** involuntary "**fluctuation**" of management board members not only in cases of very serious **problems** or the financial distress of the firm,⁶⁴ but also in "lighter" cases in **which** the supervisory board was not content with the Performance of individual managers or with the management board as a **whole**.⁶⁵ To be **sure**, the **fact** that there is **significant** involuntary **fluctuation** does not by itself say anything **about** the monitoring "**performance**" of the supervisory boards. Did they react too late, did they dismiss the right **people**, on what **signals** did they react, and are there certain **directions** in **which** their incentives might drive management? This issue certainly deserves **further** research, and until such studies are made it seems difficult to maintain that one corporate governance **system** or the other **shows better** results and should be preferred.

To get **closer** to an **answer** to this question we also need to take into consideration the incentives and disincentives for institutions like banks for corporate control. The following **sections** try to address this.

b) Incentives for control

Why do banks get involved in corporate governance, act as proxy holders and hold positions on supervisory boards?

aa) Banks are compensated through *fees for their custodial Services*. But that alone does not explain why banks vote their own and their clients' stock, appoint their managers to the **supervisory** boards of other firms, and spend money to **support** their monitoring work. Banks could (as owners of stock) free-ride, and their customers could redeposit their stock with institutions that promised no monitoring but also no expenses.

As to the **latter**, such **services** are not offered in the market. Banks could easily drive such competing institutions out of the market by **cross-subsidizing** their depot business. **Further**, investment companies that are subsidiaries of banks will not try to dilute the **position** of their parent banks.

bb) There may be other incentives or advantages that accrue to banks from their governance activities. First, they **can** try to *protect their own equity investment*. As our overview has shown, banks hold, besides their **position** as proxy holders of their clients, equity **stakes** that rank from **stakes** as small as 1 % of a firm's stock up to more than 50%.⁶⁶ The right to vote their clients' stock (at low additional **costs**) gives banks leverage to **protect** or strengthen their own investment without making **capital** infusion. For instance, if a bank holds an equity **position** of 12 % of a firm's stock and commands another 15 % through its clients' deposited shares, it has a **blocking position** against the issuance of new stock and the elimination of shareholders' preemptive **rights**⁶⁷ that it would not have as a 12 % owner alone.

cc) Secondly, banks **can** try to *protect their other (credit) investment in the firm*.

Creditors **face** the **problem** of "asymmetric information", both before the conclusion of a loan contract and thereafter. It is often argued that an equity **stake** of a bank in the borrowing firm will improve the information for the bank, and reduce the **problem** of asymmetric information.⁶⁸ That is doubtful. Typically, a shareholder will not receive earlier or **better** information than would a **creditor** bank (although, to be **sure**, a **small creditor** and a majority shareholder with immediate access to the management should not be compared). Even if the bank is represented on the **firm's** board, this will

normally not provide the bank with **better** or earlier information than it already has as creditor.⁶⁹

If these positions do not provide the bank with **better** information, they may nonetheless help to exclude or minimize risks for the bank **during** the course of a credit relationship and thus lower the agency costs associated with debt.

There is no doubt that a bank **can** improve its **position** as creditor in certain **aspects** if it is equity owner or votes stock of the firm for its clients at the same time. A creditor **commanding** 51 % of the votes in the shareholders' meeting of this borrower **can** choose who **manages** the firm. Perhaps the creditor is not **capable** of electing the best managers, but at least they will choose **people** who implicitly **promise** not to harm the interests of the creditor by engaging in risky **projects**, distribution of **assets** to shareholders, etc., without the bank's approval. As the threshold at **which** the **bank's** own equity investment is able to command a majority will be normally too high, the addition of the depot shares of the bank's clients seems to be a **perfect** arrangement to get the necessary leverage on the management to **protect** the bank's own (equity as well as) credit investment. Certainly, this power usually has to be shared with other banks, but as **creditors** of the firm they have, at least to a large extent, parallel interests with regard to the management.

If this is so, we **can** expect that credit finance for these firms plays a more important role (in terms of availability and costs of credit finance as well as **higher** leverage) than it does for firms in an environment in **which** banks do not have a **comparable** Position, and, as mentioned above, this indeed seems to be the **case**⁷⁰.

dd) Another **incentive** for a bank to acquire and vote stock **can** be to Capture *all or at least a part of the firm's financial business*. In his study on "housebank relationships", however, *Fischer* concludes that **exclusive** relationships between banks and firms are rather the exception today. They still **can** be found between **small** firms and banks. But publicly-held corporations with widely distributed stock (**which** to a large extent is, as shown, voted by the banks) may have five to ten "primary" banking relationships and a number of additional connections to other **banks**.⁷¹

Regrettably, the study does not analyze the question whether there are syndicates rather than **exclusive** business relationships with a **single** bank, as has always been contended in the literature, especially for the fee-based business like **underwriting**,⁷² and whether these syndicates reflect the shares of their members in the shareholders' meeting. Certainly, a management board will think long and hard before it **chooses** to give a considerable part of its financial business, such as raising **capital** through issuance of bonds or shares, to the competitors of those banks represented in its shareholders' meeting if the latter offer the same **services** on roughly the same conditions.

c) Disincentives

Are there also disincentives to banks in engaging in corporate control activities?

aa) A bank **which** is an institutional shareholder and offers other (financial) **services** at the same time could be eager *to get into or keep up a business relationship* and therefore refrain from being a nuisance to management at least as long as things run comparably **well**.⁷³ This depends on questions that differ in **each** individual **case**: what **position** do the offering banks and other banks have regarding management and **can** management independently decide to prefer a competitor or an "outside" bank?

bb) Another disincentive could **come** from *implicit* management **coalitions**. The large banks themselves are generally corporations with widely distributed **ownership**.⁷⁴ That could lead to the same "sympathetic" understanding of how corporate governance should **function**, or even to certain "arrangements". The most simple way would be to have **cross-interlocks** (manager A sits on the supervisory board of Company B and **vice versa**). That, however, is **forbidden**.⁷⁵ In the past, banks have helped managements of other large firms, whose stock they vote, to **protect** their own and the other managers' interests against takeovers, by **changing** the Statutes of the **respective** corporations.⁷⁶ This may have been done to **protect** the banks' **position** as proxy holders and thereby the banks' own equity investments, or

to **protect** or promote such banks' business relationships rather than to do the management of these firms a favour. But for whatever reasons, protection against hostile takeovers as a means of management control does not mean protection against control altogether if there are other "institutional" devices of control.

A last remark on disincentives to monitor should be made with **respect** to the banks themselves. As our **statistics** prove, managements of these banks **can** punish **each** other to a certain extent **because** they hold and vote roughly the similar amounts of proxies for voting shares in the other **banks**.⁷⁷ Hence there seems to be a strong disincentive at work in monitoring and controlling the other banks' managements. Instead of a control through this method and through the other monitoring devices mentioned **earlier**,⁷⁸ monitoring of bank management may occur through state supervision (i.e., the **central** bank and the banking supervisory authority) and the media.

3. Drawbacks

As we analyze institutions **which** represent **small** investors in shareholder meetings and on boards and act as corporate monitors in the shareholders' **place**, we should ask three questions: What are their incentives; are there conflicts of interests or other **drawbacks**, and how, in turn, are these institutions monitored themselves? So far I have only tried to describe the role of banks in corporate governance, their instruments, incentives, and disincentives. This may be accepted as a Substitute for the more **precise** measurements of their Performance **which** our economists still owe us. The following **part** will deal briefly with the question of whether there are **drawbacks** connected with this governance **system** (other than those already mentioned as possible disincentives). "**Drawbacks**" means disadvantages for the shareholders as well as for the **respective** firms. They may result from conflicts of interests on the part of the depot banks. Or there may be disadvantages for the shareholders that are clients of the depot banks if these institutions, **which** are thought to control management on behalf of their clients, remain **uncontrolled** themselves.

The following remarks on **drawbacks** will, however, not deal with the political debate. The role and "power" of German banks, especially the Großbanken, have been discussed for **decades**. This **section** also does not deal with the

possible risks for the banks and their depositors (which is not presently an issue, and for which prudent regulation should be **capable of providing**),⁷⁹ the **impacts** on the German stock market, the question of the “equity **capital shortage**” of German **firms**,⁸⁰ the abuse of confidential information, the role of the banks in the concentration **process**,⁸¹ or other antitrust questions - issues which normally dominate the **discussion about bank-firm relationships**.⁸²

a) Large voting right holdings of a bank and its representation on the supervisory board may drive management into an *exclusive business relationship* with this bank. This can be advantageous to the firm (through the commitment of the bank as a **source** of finance and lowered risks **because of better** possibilities to monitor and control management and the resulting easier and **cheaper** access to **credit finance**).⁸³ On the other hand, such a situation may be exploited by a controlling bank to the detriment of “its” firm. When we look at the distribution of votes among several institutions,⁸⁴ however, such an “exploitation” by one offeror does not seem very likely. Even if this were proved empirically, it would be difficult to weigh up the advantages and **drawbacks** of such “stable” business relationships.⁸⁵ - As there are several large banks represented in the general meetings, the question rather is whether these banks share at least a part of the **respective** firm’s business. Such an oligopolistic behaviour is often contended in the literature for the fee-based underwriting and floating **business**.⁸⁶ As to the lending business, “exploitation” through the imposition of interest **rates** above the market **price** seems unlikely. Admittedly, asking for the market **price** may still be advantageous for banks which have **better** information or **better** means to monitor their borrower than an “outside” lender. To the extent to which a firm pays more than **under** competitive circumstances, these premiums can be considered to be agency fees paid by the shareholders to the bank for its Service of monitoring management.

b) Another **charge** in this **context** is that institutional proxy holders who are also **creditors** *may not support* a profitable, innovative (and - perhaps - more risky) **policy** aimed at *maximizing shareholder value*. Or, to put it differently, banks may influence investment decisions of the firm to **protect** an already existing **credit** relationship, and they may prefer **projects** which need

(higher) external (credit) finance rather than preferring projects with a comparatively higher net present value for the firm (rather than the banks) and which are of greater benefit for the shareholders.⁸⁷ Banks may indeed have this preference if they are not themselves shareholders. And if the assertions of the managerialists are correct that corporate managers do not pursue profit maximization, but rather size or growth maximization,⁸⁸ then there seems to be an implicit agreement between managers and depot banks on a mutually favourable pattern at the expense of the shareholders.⁸⁹ On the other hand, debt is always looked at as a device to discipline management.⁹⁰ So why should management yield to its alleged incentives for growth maximization with the help of credit finance? Here we simply need a more systematic analysis of the relation between the financing patterns of large firms and the underlying interests.

c) A related issue concerns the *dividend policy* of firms. Management may prefer to retain earnings rather than distribute them as they accrue since this provides a way to conceal fluctuations in future earnings and thereby to reduce management's accountability for losses. And retained earnings give management the means to achieve growth maximization without being monitored by outside financiers, even at the expense of the shareholders (i.e., through "free cash flow").⁹¹ It is contended in the literature that banks support this restrictive dividend policy of managements either because they want to get at least a share of the firm's financial business⁹² or - and that seems to be the main argument - in order to protect their credit investments.⁹³ On the other hand, retaining dividends means that managements become increasingly independent and "emancipated" from external finance the larger the internal funds grow. But perhaps banks tend to neglect this long-term development in order to protect their present interests. Furthermore, there are limits to the "emancipation" of managements because of the role which banks play in their function as proxies in shareholder meetings and on supervisory boards. Here again one would like to see more theoretical and empirical studies on this point, with reference to the tax and other cost issues which affect a firm's dividend policy.

d) Even if there is no abuse there is, as our summary has shown, certainly a potential for it **because** of conflicts of interests. There is a longstanding discussion **about** how abuse **can** effectively be avoided without destroying the advantage of having an institutional arrangement which **overcomes** shareholders passivity and serves as a professional monitor. It is not necessary to go into this discussion here in detail; **suffice** it to say that the existing rules and provisions against potential abuse seem not to be **sufficient** and could and should be **amended**.⁹⁴ Another **problem** which **can** only be mentioned here is how the efforts and the Performance of these institutions which monitor managements on behalf of **small** investors **can** themselves be measured and **controlled**. By installing an institution to solve the "**principal-agent**" **problem** on the level of the corporation, we get a new "principal-agent" **problem** on the level of the intermediary. Do we have similar **problems** (i.e., **asymmetric** information, **collective action**, etc.) on this **second stage** too, and how **can** these be **solved**?⁹⁵

Although these questions concerning the monitoring Performance of the depot institutions as agents of the shareholders remain unanswered, in the following a first attempt is made to compare this institutional Solution with a market Solution, more specifically, with the threat of hostile takeovers. This threat has often been claimed in the literature to align adequately the interests of shareholders and managers, and to address the **problem** of managerial inefficiency. Would such a Solution avoid the **problems** which are connected with the institutional Solution, such as conflicts of interests, **lack** of control, etc.; would it even show **better** results, or are there other imperfections and **drawbacks** connected with this Solution? The following section will try to address these questions.

V. **Market and Institutional Monitoring - a Comparison**

A comparison between market and institutional monitoring Systems has to **start** with several caveats.

First, such a comparison is necessarily narrow-sighted in that it **picks** out only one instrument from among several which are meant to **cope** with managerial inefficiency, self-dealing and related Problems, and which are meant to **Supplement** **each** other within a given legal System. If, for instance, the

takeover market cannot deal with individual instances of management self-dealing but the institutional control of managers perhaps **can**, there may be, in a **system** which relies on market rather than on institutional control of managers, supplementary instruments available which may be even more **capable** of dealing with this specific **problem**.

Secondly, such a comparison is of limited value **because** the possible policy consequences seem to be very limited. Even if such a comparison could provide us with reliable results at this time and show us the advantages and disadvantages of both Systems, that would not necessarily mean that the other **system** could be adopted and implanted into a completely different environment. For example, **since** there are specific **structural** impediments to takeovers in German corporate law, as was shown **earlier**,⁹⁶ the threat of takeovers would presumably show different results than in a **system** which is more responsive to this **incentive**. On the other hand, it does not seem very likely that public policy and regulators in the Anglo-American countries would permit banks to play a role similar to that in Germany, even if banks had more and **better** incentives to monitor management on behalf of **small** shareholders than other institutions (such as **pension** funds).

Thirdly, the following comparison cannot deal with all **aspects**, all pros and **cons** of (hostile) takeovers on one **hand**⁹⁷ and the influence of banks on firms on the **other**.⁹⁸ The **focus** has to be and will be limited on the potential of these monitoring Systems for monitoring management efficiently.

1. Divergence of interests of shareholders and managers

A good starting point for a comparison is Professor *Eisenberg's* list of cases in which the interests of shareholders and managers **diverge**.⁹⁹ Eisenberg differentiates between "shirking," "traditional conflicts of interests" and "positional conflicts." If efforts of an agent cannot be observed, and his Performance not be **controlled**, he has no disincentive to work at a **slack pace** and to avoid the effort and **discomfort** involved in adapting to **changed** circumstances ("shirking"). "Traditional conflicts of interest" means the potential interest of agents in diverting the principal's **assets** to their own use through unfair self-dealing. The third potential **divergence** of interests are

“positional conflicts”: the interest of top corporate managers in maintaining and enhancing their **position** even at the shareholders’ expense. Positional conflicts may occur in a great variety of ways: among other measures, managers **can** make it particularly difficult to monitor their **performance**, impose high barriers to their own removal, seek to increase corporate size or “free cash flow” in **order** to maximize their power, **prestige** and salary rather than to maximize the firm’s value. How do both hostile takeovers and institutional monitoring through banks **cope** with these Problems?

a) To **start** with, neither device is aimed at prohibiting or lessening **problems** like shirking and self-dealings if these are **problems** at all. Most top managements will certainly refrain from *shirking* because their **self-esteem** is tied to work and accomplishment, and the **selection** process on the management market as well as the mutual control among **agents**¹⁰⁰ tends to exclude this **pattern**.

b) Also, most top managers will probably refrain from *unfair self-dealing* because they have internalized the rules of **social morality**.¹⁰¹ The takeover market likely has very little **impact** on such traditional conflicts of interest. A hostile takeover bid does not succeed unless it includes a premium that is significantly above the market **price**.¹⁰² A hostile bidder must also pay large fees to advisors such as lawyers, investment bankers and others. **Hence**, a takeover bid would not be economically justified if the bidder’s only aim is to end unfair self-dealing by **managers**.¹⁰³ That means that other legal provisions must deal with this **particular** conflict of interest, and the same is true for a **system** which relies on institutions like banks rather than on takeovers as a monitoring device. If a supervisory board finds out **about** unfair self-dealing of management, that does not happen just **because** banks have representatives on the board.

c) **Much** more interesting are the **effects** of takeovers and institutional control on *positional conflicts*. It seems **clear** that takeover activity is, among several other **factors** like synergy gains etc., also motivated by the inefficiency of the target’s **management**.¹⁰⁴ Here the first question is whether the

"outside" bidder has information **about** the inefficiency of incumbent management, such as whether the stock **price** of a firm is **lower** than that of industry peers **because** of inefficient management. An "inside" monitor like a bank may have an informational advantage in this **respect**. The next question then is whether and **under** which circumstances an outside bidder and an inside institutional monitor will react when they observe inefficiency. Putting to the side for the moment other **factors** such as synergy gains, etc., the bidder will only act if a takeover and replacement of incumbent management will **produce sufficient** gains to justify the huge premium and out-of-pocket transaction costs required - something that does not seem very likely if management is not excessively **inefficient**.¹⁰⁵ An "inside" monitor who is represented on the supervisory board **can** act without incurring these costs. The **problem** here, however, is that an institutional monitor with personal business interests in the firm has **incentive** not to act in **cases** in which "inefficiency" of the management, such as seeking to increase corporate size or maximize cash and other resources at the disadvantage of the firm and its shareholders, is favourable to the **monitor**.¹⁰⁶ **Hence** it is not very likely that initiatives for restructuring, disposing of underperforming subsidiaries, or splitting up a **conglomerate** will **come** from banks' representatives as long as the firm is not in financial **distress**.¹⁰⁷

2. Ex ante, interim and ex post monitoring

A **further difference** is remarkable. Institutional and market control by threat of hostile takeover differ also in that control by management replaces by way of a takeover is merely *expost control* whereas institutional control is not. To be **sure**, the idea of control by the threat of replacement is thought to give management **incentive** in **advance** to try harder. But it works differently from the *ex ante*, *interim* and *ex post monitoring* by an inside institutional monitor. Firstly, as *Eisenberg* has pointed out, the threat of takeover will not **affect** the behaviour of managers who do not realize they are inefficient, and do their best as they see it: they are already doing all they **can**.¹⁰⁸ Especially in such **cases** a **system** should be preferred which does not react only after the firm has incurred considerable losses. Identifying **competent** managers from the beginning, gathering information continuously and familiarity with the qualifications of management could avoid this.

3. Turnover vs. “relational” monitoring

The notion that the governance **system** which we are examining is based on a **long-term** relationship between a few depot institutions and the **respective** firms reveals another **contrast** to a **system** in which no **"intermediaries"** stand between management and institutional or private shareholders, shareholders who themselves are not **active** in corporate governance except by “voting with their feet,” especially in the **case** of a takeover. Private shareholders, like institutional shareholders, may have **short** “shareholding horizons.” That may be because they have to sell their shares, in the **case** of an individual, for purposes of private needs for liquidity or, in the **case** of, say, a **pension** fund, because it has to make disbursements to pensioners. Or shares may be sold because the investor or fund **manager** believes he has identified a mispriced share, or because the shareholder is offered a **higher price** than the **actual** market **price** by a bidder. Short shareholding horizons and a high turnover in a firm’s shares make it difficult for the Company to establish meaningful relationships and two-way communications with its shareholders. Short term investments in a firm’s stock do not only make it difficult for shareholders to influence a company’s affairs, leaving the takeover mechanism as the major corrective **device** to align the interests of management with those of constantly **changing** shareholders. It may even lead to the question of extent to which shareholders who own stock only for a comparably short period of time should be given influence and say in corporate affairs at all by those who formulate the Charter, by-laws and **applicable** regulations of the **corporation**. In a **system** where proxies are given to “professional” institutions which remain the same over time **irrespective** of the turnover in the underlying shares, **long-term** relationships and two-way communications between management and such interested and responsive proxyholders **can** be established, and there may be more willingness to give more information and to concede more rights and influence to shareholders represented by such institutions. Of course, the question **arises** again of whether and to what extent such stable relationships between management and professional proxyholders with own business or equity interests in the firm are favourable or detrimental to the **small** investors because of the conflicts of interests or the **lack** of control in the relationship between these intermediaries and the shareholders, as mentioned above.

4. Long-term vs. short-term

How do managers behave in a **system** without stable **long-term** relationships with their shareholders and the threat of a hostile takeover above their heads? Do they, in **order** to satisfy the greediness of the investors and to keep the stock prices high, **slash** expenditures which pay off only in the long-term? That has frequently been contended in the literature as well as in the political debate, and Anglo-American scientists and policy-makers apparently become increasingly concerned **about** the short-term **issue**.¹⁰⁹

Research and development expenditures of firms in various nations are compared, and specific institutional features like quarterly reports, interim dividends, or the investment **policy** of **pension** funds and other institutional investors are blamed for forcing managements to take short term views. Hostile takeovers are said to **contribute** to this, too. The **plans** of the EC Commission to abolish **caps** on shareholder voting rights and dual **class** voting ("Höchststimmrechte" and "Mehrfachstimmrechte") **under** the Fifth EC **directive** has been strongly opposed by German industry, especially on the grounds that (hostile) takeover activity would lead to short-termism and have negative **impacts** on **resource allocation** and the German economy as a whole. **Is** a bank-oriented corporate governance **system** (without hostile takeovers) advantageous in this **respect**?

As to hostile takeovers, the debate among economists seems to date to be unsettled. In one Version investors are short-sighted and behave myopically to sacrifice long-term benefits for immediate **profits**. As a consequence, firms that engage in long-term planning and make substantial investments in research and development (R & D) are supposedly undervalued by the market and become takeover targets.¹¹⁰ *Shleifer* and *Vishny* have argued that the **short** time horizon of arbitrage investors, who **focus** on short-term **assets** **because** they are relatively **less** expensive to arbitrage, may result in market **underpricing** of a corporation's equity. This phenomenon in turn is said to impose a **short** time horizon on managers, who thus avoid long-term investments that depress share prices over the short term and make the **corporation** vulnerable to a hostile **takeover**.¹¹¹ *Stein* has developed a formal model in which the threat of takeovers encourages **myopic** behaviour on the part of managers. A **central** prediction of this model is that firms that construct

barriers to takeovers are able to increase profitable **long-term** investments such as research and development (**R & D**).¹¹² There is, however, empirical **evidence** that firms actually decrease **R & D** intensity after the **introduction** of shark repellents, thus failing to support this prediction. These findings suggest that takeover impediments may even reduce incentives to engage in **long-term investments**.¹¹³ Furthermore, there is **evidence** that the market **responds** positively to **announcements** of increases in **R & D** and other **capital investment expenditures**¹¹⁴ which, on the other hand, does not mean that there informational asymmetries between the markets and firms with **respect** to such expenditures may not still remain, such as instances where management does not want to communicate commercially sensitive information to the market. And it may well be that managers, in **order** to avoid undervalued stock which might lure hostile bidders, **shift** from profitable **long-term investment** to short-term **projects**- although this hardly seems to be a good defence against unwanted **bids**.¹¹⁵

As this debate **cannot** be continued from the outside, would it be possible at least to establish that the corporate governance structure in German large firms **supports** long-term views of management? Although to my knowledge there are no empirical data available with **respect** to these large firms, my guess certainly is that management in these firms are encouraged to maintain a **focus** on the long term: firstly, managers in these firms are usually elected for five years, and **can** be recalled **prior** to the expiration of their term only for **cause**.¹¹⁶ Secondly, the equity holdings of banks as well as the amount of proxies which are given to them remain rather stable over time **irrespective** of the **fact** that the underlying stock is traded. That means that the monitoring institutions remain the same over time. Thus, long-term **projects** can be discussed and explained to them, and this **discussion** is a dialogue rather than merely giving a "Signal" to an anonymous market which will "mirror" it by **pricing** the firms value. On the other side, we must also take into account the incentives of banks as **creditors**. Banks might, as **creditors**, prefer **projects** which are comparatively less profitable.' ¹⁷

In short, there is no clearcut **answer** to our question as to whether the elements of the governance Systems discussed here favour rather than **discourage** long-term investments with **higher** net present values.

5. Adaptability to change

a) It has already been mentioned that in **order** to assess the efforts and results of the management an internal monitoring **system** must rely on a comparison of **actual** results with the results of the firm for **former periods**, the firm's **plans** and the results of the firm's competitors within the same industry. This hints at a limitation of such an internal monitoring **system** where "outside governance" may have an advantage: a potential outside bidder may have information **about**, say, a new **technology** which management and the supervisory board of a firm do not have and which is not yet in use within the industry. Is outside governance by (hostile) takeovers which **forces** a firm to adapt and react to technological changes a necessary Supplement to an internal monitoring **system** which fails in such cases?

In this **respect** one should differentiate between the mere dissemination of information on one side and the reluctance of the incumbent management and supervisory board on the other. Hostile takeovers are not necessary to disseminate new information **about**, e. g., new value - increasing **technologies**. Information **can** be sold to the firm or shared with it in other ways.

b) Management and the members of the **supervisory** board may, however, be reluctant to make changes that raise the market value of the firm even if the **steps** that have to be taken to raise the value are known. This may be **because** the required changes in a declining industry, such as layoffs, wage reductions, investment **cutbacks**, or divestitures, would harm the employees who are considered more **important** to the organization than shareholders or **because** members of the supervisory board fear the negative **Publicity** or **problems** with **local** authorities that would result from such unpopular decisions. In such cases, a hostile bidder could buy the firm and implement profit-increasing changes against the wishes of both the board and the top management of the target. More generally, takeovers could play a role in bringing **about** a necessary shift in a firm's **policy** and in replacing managers whom the supervisory board is unable or unwilling to **force** to take the necessary **steps**.

There is interesting empirical **evidence** especially for this role of hostile takeovers **during** the merger wave of the eighties in the U.S. *Morck, Shleifer* and *Vishny* examined the circumstances **under** which a company's poor Performance leads to an internal governance **response** - the incumbent board replacing management - as opposed to the external governance **response** of a hostile takeover. Tracking a **sample** of 454 of Fortune 500 companies over the period 1981 - **1985**, the authors concluded that an internal governance **response** is more likely when a Company performs **poorly** compared with industry competitors, but that hostile takeovers are predictable based on poor Performance of the entire industry. In **cases** in which whole industries (e. g., airlines, steel, or oil) were performing **poorly** corporate boards apparently were reluctant to take the necessary **steps** to increase the value of the firms by removing irresponsible managers. Instead, this **function** has been accomplished by hostile takeovers. Apparently takeover organizers have taken advantage of opportunities raised by the ineffectiveness of internal control devices. ¹¹⁸

VI. **Concluding Remarks**

This overview and the thoughts expressed above may have shown that the German experience with its corporate governance **system** in large firms is both ambivalent enough and empirically unexplored to suggest great **care** in using it as a **point** of comparison for **discussion** of these issues or for making **policy** recommendations in other national **contexts**. It nevertheless seems safe to say that an institution-based or "relational" governance **system** and a market for corporate control **focus** on different **problems** for which the other **system** is less able to offer solutions. **Hence** they should be considered as supplementary rather than as mutually **exclusive systems**.¹¹⁹ But this **approach**, which has also been adopted by the EC Commission in its proposals for a Fifth and Thirteenth **Directive** on Company law leads to new questions: **can** these two governance Systems really be combined, or will the development of a takeover market destroy the existing "relational" governance **system** or **change** it, and if so, with what results? The proposals of the EC Commission for the Fifth and Thirteenth Directives must be **further** discussed in this light.

- * Dr. jur., professor at the university of Osnabrueck, Katharinenstrasse 15, D-4500 **OSNABRUECK/Germany**. Paper, presented at the Oxford Law Colloquium, University of **Oxford/U.K.**, Sept. 10 - 11, 1992. **Helpful** comments have been given by Jonathan S. **Berck**, Philipp v. Randow, Roberta Romano, Dieter Schmidtchen, and Mark Wingerson.
- 1 Cosh/Hughes/Singh (1990) p . . .
- 2 Unlimited partnership ("offene Handelsgesellschaft"); limited partnership ("Kommanditgesellschaft").
- 3 "Gesellschaft mit beschränkter Haftung" or "GmbH".
- 4 "Aktiengesellschaft".
- 5 Numbers as of Dec. 31, 1990: Gesellschaften mit beschränkter Haftung 433,731; Aktiengesellschaften and Kommanditgesellschaften auf Aktien 2,682. Source: Statistisches Bundesamt, oral information, and Statistisches Jahrbuch 1991 p. 141.
- 6 Source: Arbeitsgemeinschaft der Deutschen Wertpapierbörsen, Jahresbericht 1990, p. 157 (numbers of 1990); over-the-counter traded stock excluded).
- 7 More than 50 % widely held: **about** 80 companies; more than 75 % of stock widely held: 38 companies (Source: Saling, Aktienführer, 84. ed. 1991 [numbers as of Sept. **1990**]; Commerzbank [ed.], Wer gehört zu wem?, A guide to capital links in German companies, 17. ed. 1991).
- 8 Cf. the list of the largest 100 firms (measured by their value-creating potential ["Wertschöpfung" = **surplus** or **loss** of the firm corrected by additional **factors**]) in: Bundestag-Drucksache 1 **1/7582** pp. 176 ff. and the list of German firms and the structure of their ownership in: Commerzbank (ed.), Wer gehört zu wem (N. 7).
- 9 Cf. the detailed description by Conard (1984) and Meyer-Schatz (1988).
- 10 Cf. thereto Wiedemann (1980). Although the present **codetermination** laws **came** into **force** after the end of the **Second** World War, there is an older tradition of obligatory representation of employees on the supervisory boards.
- 11 In the German **system** employees are stakeholders in a firm not only in the regular and usual sense as Partners of long term (labour) contracts and relationships with the **corporation** but also **because** their **pension** capital is - unlike the practice in the Anglo-American countries - kept within the employing firm and serves as an important **source** of capital of the firm. "**Codetermination**" finds its legitimation in this specific structure.
- 12 Cf. IV. 1 .a), infra.

- 13 Cf. Hax (1990); Monatsberichte der Deutschen Bundesbank, Oct. 1991 pp. 22 seq. and N. 50, *infra*.
- 14 "Höchststimmrechte"; cf. Baums (1990).
- 15 In **particular, changes** of the Statutes mostly **can** be effected only if three quarters of the shares represented in the shareholder meeting agree **irrespective** of whether the present shares may not be voted **because** of a statutory cap on voting rights.
- 16 Lüttmann (1992) p. 158, 159.
- 17 Most recently thereto Landgericht Aachen in the ABM - AGF **case**; the suit of the **French AGF** to get its shares registered was dismissed (19.5.1992 Der Betrieb 1992, 1564).
- 18 Cf. Herdt (1991); Sünner (1991) pp. 469-475.
- 19 The following description is a slightly **changed version** of my **article** in 40 *AmJCompL* issue 3 (1992).
- 20 Cf. Table I (Appendix).
- 21 See c), *infra*.
- 22 See b), *infra*.
- 23 German banks may own investment companies and do so to a large extent. Data in Gottschalk (1988) p. 295, 296; data on the engagement of investment funds in corporate stock most recently in Mühlbradt (1992). Other than for banks (cf. N. 37, 38, *infra*), there is a 10 % ceiling on shares of a **portfolio** firm for investment companies (Gesetz über Kapitalanlagegesellschaften, § 8 a). Investment companies have to vote the shares in their portfolio personally and may not give a general proxy to another person or institution (Gesetz über Kapitalanlagegesellschaften, § 10 I). This Provision does not exclude, however, that an investment Company and its parent Company bank agree to vote in the same sense.
- 24 **Only** in 2-3 % of all **cases**; Immenga (1978) p. 103; Gottschalk (1988) p. 296.
- 25 Especially the large banks **which** act as proxyholders are (or until recently were) corporations with widely held shares themselves.
- 26 Cf. §§ 128, 135 Aktiengesetz (Stock Corporation Act).
- 27 Monopolkommission, **Zweites Hauptgutachten 1976/77**, Fortschreitende Konzentration bei Großunternehmen (1978) pp. 283 **sqq.**; Bericht der Studienkommission "Grundsatzfragen der Kreditwirtschaft (1979) pp. 111 seq. This **commission** concluded that in **1974/75** in 74 stock-exchange listed companies (with a nominal **capital** of at least DM 50 millions) **52,5 %** of the present shares were voted by banks or investment companies as proxy holders and another **10,2 %** as owners, Report p. 290-291.

- 28 Gottschalk (1988).
- 29 Böhm (1992).
- 30 Measured by their “Wertschöpfung” (= **surplus** or loss of the firm corrected by additional **factors**). The **contribution** of the largest 10 to the “Wertschöpfung” of all firms in the national economy was **about** 8 % in 1986.
- 31 Böhm (1992) p. 242.
- 32 Cf. N. 14, supra.
- 33 This corresponds with the data of the Bundesbank according to **which** by the end of 1988 the three Großbanken held 43 % of all depot shares in their custody; Die Aktiengesellschaft, AG-Report, p. 412 (1989).
- 34 See Table I in the appendix.
- 35 Cf., e.g., Immenga (1978) p. 103-104; Gottschalk (1988) p. 300.
- 36 Bericht der Studienkommission . . . (N. 27) p. 171.
- 37 §§ 13 (4), 19 (1) Nr. 6 Kreditwesengesetz (Banking Act).
- 38 § 12 Kreditwesengesetz.
- 39 Amtsblatt der EG Nr. L 386 (Dec. 30, 1989) Art. 12.
- 40 Korn. (91) 68 endg. (23/4/1991).
- 41 Source: Deutsche Bundesbank, written testimony for the hearing before the Committee for Economy of the Federal Parliament (Bundestagsausschuß für Wirtschaft. Anhörung vom 16. Mai 1990) of April 16, 1990 p. 9.
- 42 Cf. Table II (appendix).
- 43 Böhm (1992) pp. 231-238.
- 44 § 128 (2) (5) Aktiengesetz (Stock corporation Act).
- 45 Cf. in more detail 2., infra.
- 46 That corresponds with the self-assessment of their Position; Bleicher (1987) p. 58.
- 47 3-4 times per year; cf. Bleicher/Paul (1986) p. 273; Bleicher (1987) p. 41.
- 48 Cf. Bericht der Studienkommission (N. 27) pp. 122-126 and the tables on pp. 440-445 and on pp. 585-598; Immenga (1978) pp. 109-109; Informationen des Bundesverbandes deutscher Banken, Zur Diskussion um die “Macht der Banken” (1989) p. 20; Gottschalk

- (1988) pp. 299 seq.; **survey** in Fischer (1990) pp. 148-149 with further references.
- 49 Böhmer (1992) pp. 194-196 and pp. 257-263.
- 50 Banker's **credits** (of German banks) made up for (at least) 32 % of the **balance** sheet total of German firms in, **1987** (Source: Monatsbericht der Deutschen Bundesbank 1/1989 pp. 20, 22). **Neuberger/Neumann** (1991) even report an **average of 40 %** as compared to **about 9 %** in the U.S. and U.K., whereas C. Mayer (1990) p. 313 **comes** to other conclusions: "Rather strikingly, then, there is no support from these **figures** for the commonly held view that German banks **contribute** a substantial amount to the financing of their industry". (Note that these numbers **cover** all firms, not only our Sample).
- 51 Fischer (1990) pp. 80-81, 149; cf. also Poensgen (1980).
- 52 §§ 116, 93 (1) Aktiengesetz (Stock Corporation Act).
- 53 § 404 Aktiengesetz.
- 54 For empirical data on the **composition** of the supervisory board cf., e.g., the study of Gerum/Steinmann/Fees (1987).
- 55 Bleicher (1987) p. 57.
- 56 Bleicher (1987) pp. 54 sqq.
- 57 Cf. Table I, Appendix.
- 58 Cf. § 32 Mitbestimmungsgesetz (Codetermination Act).
- 59 On the role of the nominating **committee** (Vorstandsausschuss) and the nominating process, e. g., Brinkmann-Herz (1972).
- 60 Cf. Brinkmann-Herz (1972) pp. 81, 82.
- 61 Cf. V.5., infra.
- 62 § 84 (3) Aktiengesetz (Stock Corporation Act).
- 63 § 84 (1) Aktiengesetz.
- 64 Poensgen/Lukas (1982) pp. 187, 188.
- 65 Cf. **same**, pp. 183, 184, 188, 190.
- 66 Appendix Table II.
- 67 Cf. § 186 (3) Aktiengesetz (Stock Corporation Act).
- 68 Cable (1985); Pozdena (1987); (1990 a; b); **McCauley/Zimmer** (1989); Berglöf (1990).

- 69 Cf. N. 50 and accompanying text.
- 70 Cf. N. 450.
- 71 Fischer (1990) pp. 21-22; 102-103. Fischer looked at **the** credit relationships between banks and firms only. **If** the same **is** true for other Services, especially underwriting and floating new shares, is not clear.
- 72 Cf., e. g., Böhm (1992) pp. 154-155 with **further** references.
- 73 Cf. Böhm (1992) pp. 138-141.
- 74 Cf. Commerzbank (ed.), *Wer gehört zu wem*, A guide to **capital** links in German companies, 17. ed. 1991.
- 75 § 100 (2) (3.) Aktiengesetz (Stock Corporation Act).
- 76 See N. 14, *supra*, and accompanying text.
- 77 Appendix, table I.
- 78 Cf. p. [8], *supra*.
- 79 Overview and **discussion** in Baums (1992, 1992 a).
- 80 Cf. Hax (1990).
- 81 Cf. Eckstein (1980).
- 82 See most recently Böhm (1992).
- 83 Cf. the interesting study of Fischer (1990).
- 84 See Appendix, table I.
- 85 Cf. • for the credit relationship • Hellwig pp. 55 seq.
- 86 Cf. N. 72.
- 87 Böhm (1992) pp. 142,144.
- 88 Cf. Klein/Coffee (1990) pp. 161, 162 with **further** references.
- 89 Cf. Böhm (1992) pp. 142, 144.
- 90 See, e. g., Jensen (1989) p. 660.
- 91 Cf. Jensen, *op. cit.*, p. 659.
- 92 Böhm (1992) pp. 139, 140.
- 93 Immenga (1978) p. 121; Böhm (1992) pp. 143, 144, 149 with **further** references.

- 94 Cf. the overviews in Körber (1989); Böhm (1992) pp. 157-167 and pp. 211-221; Köndgen (forthcoming).
- 95 For references on the theoretical discussion of the value of having agents **watching** other agents and how to solve the "control of controllers" problem, see Black (1992).
- 96 See III.1 ., supra.
- 97 A thorough overview has been given recently by Romano (1992).
- 98 Most recently thereto Böhm (1992).
- 99 Eisenberg (1989) pp. 1471-1474.
- 100 Cf. Varian (1990).
- 101 See also Eisenberg (1989) p. 1473.
- 102 Jensen (1988) pp. 22, 28.
- 103 Eisenberg (1989) p. 1498.
- 104 Jensen (1988) p. 28; a recent thorough overview is given by Romano (1992).
- 105 Eisenberg (1989) p. 1497; **evidence** on management turnovers after takeovers in Romano (1992) pp. 129, 130.
- 106 Cf. the discussion under IV., 2.c., supra.
- 107 Cf. also 5., infra.
- 108 Eisenberg (1989) p. 1498.
- 109 See the report in The Economist June 27, 1992, pp. 77-78.
- 110 Cf. Lipton/Rosenblum (1991) pp. 208-209 and pp. 213-214 with further references.
- 111 Shleifer/Vishny (1990).
- 112 Stein (1988).
- 113 Meulbroek et al. (1990); see also Gordon/Pound (1991); Romano (1992) p. 145 with further references.
- 114 Han/Martin/Kensinger (1990); see also Jensen (1988) pp. 26-27 and Marsh (1990) with further references.
- 115 Cf. Marsh (1990) p. 46.
- 116 See N. 62.
- 117 See IV.3.b), supra.

118 **Morck/Shleifer/Vishny (1989).**

119 Cf. also Gilson (1992).

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Appendix

Table I

Voting blocks of the banks at the shareholder meetings of the 100 largest firms in 1986*

Rank of Company in 1984	% of shares present at the meeting	% of shares voted by			All 3 big banks	All banks	
		Deutsche Bank	Dresdner Bank	Commerzbank			
1	Siemens	60,64	17,84	10,74	4,14	32,52	79,83
2	Daimler Benz	81,02	41,80	18,78	1,07	61,66	69,34
	Mercedes-Holding	67,20	11,85	13,66	12,24	37,75	57,35
3	Volkswagen	50,13	2,94	3,70	1,33	7,98	19,53
5	Bayer	53,18	30,82	16,91	6,77	54,50	95,78
6	BASF	55,40	28,07	17,43	6,18	51,68	96,64
7	Hoechst	57,73	14,97	16,92	31,60	63,48	98,34
9	VEBA	50,24	19,99	23,08	5,85	47,92	98,18
11	Thyssen	68,48	9,24	11,45	11,93	32,62	53,11
12	Deutsche Bank	55,10	47,17	9,15	4,04	60,36	97,23
13	Mannesmann	50,63	20,49	20,33	9,71	50,53	95,40
18	M.A.N. (GHH)	64,10	6,97	9,48	13,72	30,17	52,85
21	Dresdner Bank	56,79	13,39	47,08	3,57	64,04	98,16
27	Allianz-Holding	66,20	9,91	11,14	2,35	23,41	60,08
28	Karstadt	77,60	37,03	8,81	33,02	78,86	87,27
29	Hoesch	45,39	15,31	15,63	16,73	47,67	92,39
34	Commerzbank	50,50	16,30	9,92	34,58	60,81	96,77
35	Kaufhof	66,70	6,29	13,33	37,18	56,80	98,45
36	Klöckner-Werke	69,13	17,30	3,78	3,55	24,63	53,00
37	KHD	72,40	44,22	3,82	1,50	49,54	65,29
41	Metallg'schaft	90,55	16,42	48,85	0,35	65,62	75,95
44	Preussag	69,58	11,15	5,60	2,59	19,34	99,68
51	Degussa	70,94	6,88	33,03	1,89	41,79	67,09
52	Bayr. Vereinsbank	62,40	11,42	2,71	3,59	17,72	68,69
56	Continental	35,29	22,77	9,99	6,04	38,81	95,55
57	Bayr. Hypobank	67,90	5,86	7,05	1,20	14,11	92,09
59	Deutsche Babcock	67,13	7,58	9,67	5,29	22,54	97,01
67	Schering	46,60	23,86	17,46	10,17	51,50	99,08
68	Linde	52,99	22,76	15,73	21,36	59,87	90,37
73	Ph. Holzmann	82,18	55,42	0,91	6,49	62,82	74,81
94	Strabag	83,02	6,80	19,15	1,37	27,32	95,24
96	Bergmann	99,12	36,89	-	-	36,89	62,15
98	Hapag-Uoyd	84,50	48,15	47,82	0,39	96,36	99,50
on average		64,49	21,09	15,30	9,05	45,44	82,67

* Source: Gottschalk (1988) p. 298. The numbers for Siemens, Veba and Continental refer to the 1987 meeting. The list adds up the shares of banks held by them on own account, their proxy holdings and the shares held by investment companies which are subsidiaries of the respective banks.

Table II
 (Source: Böhm [1992] p. 225, 226)
Stockholdings of banks
in the 100 largest industrial firms in 1986
(% of nominal capital)

Nr.	Rank (size of turnover)	Company	Nominal capital (Mill.DM)	Deutsche Bank	Dresdner Bank	Commerz- bank	Other banks	All banks together
1	1	Daimler Benz AG	2.116	28,5	1,6	1,6	3,2	34,9
2	8	Thyssen AG	1.565			> 5		> 5
3	12	Klöckner Werke AG	469,3	7,2	3,2	3,2	16,4	30
4	14	BMW AG	750		5-10			5-10
5	19	Metall- ges. AG	280	11,25	16,5		0,56	28,3
6	21	MAN AG	674,5			> 8,25		> 8,25
7	26	AEG AG	931,2	16	0,9	0,9	1,8	19,6
8	27	Degussa AG	284		>10			>10
9	32	Preussag AG	401,6				43	43
10	37	Ph. Holz- mann AG	90	35		7,55		42,55
11	41	VEW AG	1.000	6,3			10,46	16,76
12	43	MBB GmbH	600		5-10	> 0,3	5,0	10-15
13	46	Hochtief AG	200			>16,25	>25	>41,25
14	47	Dt. Babcock	250				> 5	> 5
15	49	Conti- nental AG	312,1	>10				>10
16	54	AGIV	80				44	44
17	58	Linde AG	237,7			>10		>10
18	80	Strabag AG	55,1				>50	>50
19	81	PWA AG	200				44	44
20	83	Bilf. u. Berger AG	70		>25			>25
21	91	Fichtel u. Sachs	128			35		35
22	99	Dyckerhoff u. Widmann AG	57	6,72		1,45	13	21,17